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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,087	04/20/2004	Naila K. Khalaf	USP2401A-NKK	6011
30265 7590 10/27/2008 DAVID AND RAYMOND PATENT FIRM 108 N. YNEZ AVE., SUITE 128 MONTEREY PARK, CA 91754				
EXAMINER DEMILLE, DANTON D				
ART UNIT		PAPER NUMBER		
3771				
MAIL DATE		DELIVERY MODE		
10/27/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/829,087

Applicant(s)

KHALAF, NAILA K.

Examiner

Danton DeMille

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 39-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 39, line 10, there is no clear antecedent basis for “said power supply”.

Claim Rejections - 35 USC § 102

Claims 39-42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hajianpour.

Hajianpour teaches a massager body 10 which has a massage portion 24 defining an inner treatment surface 26. A massaging device 47, 50 comprises a massage generating unit comprising a driving motor 47 and a massage actuator 50 centrifugally mounted thereto in such a manner that said massage actuator 50 is adapted to be driven to rotate centrifugally by said driving motor 47. A control knob 14, 16 is electrically connected between a power supply 48 and the massage generating unit 47, 50. A seatbelt fastening arrangement is provided comprising at least one seatbelt fastener comprising first 28 and second 30 elongated fastening straps rearwardly extended from the massager body as shown in figure 1 wherein the two end portions of the fastening straps are adjustably and overlappedly communicating with each other to define a connecting loop. The massager body further has a receiving pocket formed on the massage portion within the housing 32 and defining an access opening for switches 14 and 16 which communicates said receiving pocket with an exterior of the massage body wherein the massaging device is completely disposed and substantially protected in said receiving pocket via said access

opening so the user is able to selectively actuate the control switch for switching on and switching off said massaging device from an exterior of said receiving pocket. Hajianpour anticipates all of the claimed structural limitations. The intended use of being fastened to a seatbelt is possible by wrapping the straps 28 and 30 around the seatbelt.

Claim Rejections - 35 USC § 103

Claims 39-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lunn in view of Sears and Smith '390.

Lunn teaches the heart of applicant's invention. Lunn teaches a seat belt massager for detachably fastening on a seat belt comprising a massager body 10 having a massage portion defining an inner treatment surface 16 figure 3, and a massaging device 12. The massaging device "of the present invention is to provide a portable battery-operated vibrator which can be turned on and off without having to remove the vibrator from the assembly" column 1, lines 24-26. Clearly the device has a power supply and a control switch. While Lunn may not teach the details of the vibrator because such is well known to the artisan of ordinary skill, using a motor and eccentric weight are conventional and an obvious provision. Any conventional arrangement would have been an obvious provision. Sears teaches the convention of using a battery operated motor with a motor and eccentric weight in a pocket attached to a belt. It would have been obvious to one of ordinary skill in the art to modify Lunn to use a conventional battery, motor and eccentric weight as taught by Sears to provide the details of a conventional vibration device.

Lunn teaches a seat belt fastening arrangement that appears to include first 26 and second 28 elongated fastening strap portions rearwardly extending wherein the two end portions 26, 28 of the fastening straps overlappedly communicating with each other to define a connecting loop

within the two fastening straps such that the seat belt is adapted to slidably pass through the connecting loop. While Lunn teaches snaps 30 as fastening means provided on the massager body for detachably fastening the massager body on the seat belt they may not be adjustably connected together. There appears to be no unobviousness to using any other conventional means for attaching the two ends of the straps together in order to form the connecting loop. Hook and loop fastening means is one conventional means for fastening the two ends of the straps together. The examiner takes official notice that hook and loop fastening means are well known to the artisan of ordinary skill as a means to fasten two straps together quickly, economically and also provide adjustability.

The message device 12 is adapted to effectively deliver message impulse to an exterior of the massager body through the treatment surface 16 to the body of the user. Lunn teaches a compartment 14 formed on the message portion and defining an access opening at one end which communicates the receiving pocket with an exterior of said message body. It would appear that Lunn teaches "said massaging device is completely disposed and substantially protected in said receiving pocket via said access opening in such a manner that a user is able to selectively actuate said control switch for switching on and switch off said massaging(sic) device from an exterior of said receiving pocket". It appears to be completely disposed by the compartment/pocket because the compartment/pocket is the only thing that completely supports the massaging device on the massager body it would appear that the pocket 14 completely disposes and substantially protects the massaging device therewithin.

Lunn teaches all of the parts claimed generically. Specifically, the details of the vibrator comprising a motor and eccentric weight are well known expedients for vibrators. Whether or

not the strap of Lunn comprehends the claimed first and second elongated fastening straps is also well within the realm of the artisan of ordinary skill in the art of attaching straps together. Whether or not the receiving pocket of Lunn is a receiving pocket is also well within the realm of the artisan of ordinary skill. The differences are a matter of form not of substance.

Smith teaches in figure 3B a cloth pouch 40 designed to include a pair of straps 39, 41 for securing the cloth pouch on a belt. The cloth pouch is a generic container for a plurality of different items. Finding an alternative way of supporting a vibrator on a seatbelt that doesn't happen to be bullet shaped to fit in the pocket of Lunn would have gone to Smith who teaches an alternative pocket as an obvious equivalent means of securing the vibrator to the seatbelt including the more popular hook and loop type fastening straps. The vibrator switch can still be accessed from the exterior of the pocket through the cloth exterior.

It would have been obvious to one of ordinary skill in the art to modify Lunn to use a conventional motor and eccentric weight for the vibrator, provide a different type of pocket such as taught by Smith as an obvious equivalent alternative means for doing the same function and using hook and loop fastening straps as taught by Smith instead of the snap fasteners 30 providing the predictable results of quick and economical means of fastening the two straps together that also provide adjustability and is an obvious equivalent alternative means for providing the same function.

Response to Arguments

Applicant's arguments filed 04 August 2008 have been fully considered but they are not persuasive.

Applicant argues that the 35 USC 103(a) rejection over Lunn is not proper because “the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious**” however, the examiner respectfully disagrees. The subject matter **as a whole** is taught by Lunn. Providing a massage body with a vibrator contained therein attached to a seatbelt using a strap is taught by Lunn. There are no differences of function, purpose or intended use. The only differences between Lunn and the instant invention are minor details of form not substance. Under some circumstances, however, changes such as these may impart patentability to a device as long as they produce new and unexpected results which is different in kind and not merely in degree from the results of the prior art. Whether or not the vibrator is a conventional motor and eccentric weight is a matter of degree not a difference in kind or produces and unexpected result. Whether or not the strap securing the vibrator to the seatbelt uses two straps instead of one or uses hook and loop attachment means instead of snaps is a matter of degree. Whether or not the compartment of Lunn is a “receiving pocket” is a matter of degree not of kind. It is still a compartment that disposes the vibrator therein. Even though applicant's modification results in minor improvement and utility over the prior art, it may still not be patentable if the modification was within the capabilities of one skilled in the art.

Applicant argues that Lunn teaches the vibrator is “held” as opposed to “disposed” by the compartment. This is a matter of degree not a patentable distinction. If the vibrator is “held” in the compartment it also “disposed” in the compartment.

Applicant argues that the user has “direct access” to the vibrator however, this “direct access” comprehends the claimed “a user is able to selectively actuate said control switch for

switching on and switching off said messaging(sic) device from an exterior of said receiving pocket". Lunn teaches having direct access of the vibrator from an exterior of said receiving pocket. Whether or not the vibrator is completely disposed within the receiving pocket or not is a matter of degree not of kind. Having the vibrator disposed completely within the pocket is not an unexpected result and advantage. If it is unexpected then why does Sears teach a vibrator that is completely disposed within a pocket on a belt attached to the body.

Applicant argues that the vibrator of Lunn has a plurality of physical layers for the vibration to go through. It is not clear how much weight can be given this argument since there is nothing claimed that would somehow define this over Lunn.

Applicant also argues that the device of Lunn is difficult and inconvenient to detach from the seatbelt. It is not clear how undoing a couple of snaps is difficult and inconvenient for the user.

Applicant also argues that the mere fact that a reference could be modified to produce the instant invention would not make the modification obvious unless it is suggested by the prior art. The prior art already teaches all of the essential elements claimed. The only differences are using a different type of attaching means for the straps or the shape of the compartment or the type motor to drive the vibration. The prior art already teaches these features choosing other obvious equivalent alternative means for performing the same function is not a patentable difference.

The examiner is not using hindsight based on the invention to defeat patentability because the prior art teaches all of the essential elements claimed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

1 November 2008

/Danton DeMille/

Danton DeMille
Primary Examiner
Art Unit 3771